

1 **BEFORE THE LAND USE HEARINGS EXAMINER**
2 **FOR CLARK COUNTY, WASHINGTON**

3
4 Regarding applications by East County Reclamation Co. for) **FINAL ORDER**
5 conditional use permits for a landfill and recycling center) **ON REMAND**
6 and for a covenant release and regarding an appeal by others) CUP 89003/CUP 91009
7 of an associated Environmental Impact Statement under SEPA) CPZ 2001-00001
8 for certain land in unincorporated Clark County, Washington.) SE 960180

9
10 **A. SUMMARY**

11
12 1. The applicant, East County Reclamation Co., Inc. ("ECRC"), requests
13 approval of two conditional use permits ("CUP"). One CUP is for a "special use/limited
14 purpose" landfill to contain demolition, construction and land clearing debris (CUP
15 89003). The landfill also requires a Solid Waste Zoning Permit ("SWZP"). The second
16 CUP is for a recycling center (CUP 91009). The applicant also requests release of a
17 covenant that applies to one acre of the site pursuant to Resolution 1978-06-88 (Exhibit
18 23) (CPZ 2001-00001). These applications are subject to review and approval by the
19 Clark County Land Use Hearings Examiner (the "examiner") after public review. The
20 applications also are subject to the Washington State Environmental Policy Act
21 ("SEPA"), pursuant to which a Final Environmental Impact Statement ("FEIS") was
22 issued and appealed to the examiner.

23
24 2. On February 14, 2001, the examiner issued a final order in which he granted
25 the SEPA appeal, in part, and concluded the FEIS did not comply with the procedural and
26 substantive requirements of SEPA. The examiner also denied applications for the two
27 CUPs, the SWZP and the covenant release. The applicant appealed that decision to the
28 Clark County Board of Commissioners (the "BCC"). Because the BCC did not have
29 jurisdiction over the SEPA appeal, it affirmed the examiner's decision. The applicant
30 appealed the BCC's decision to Clark County Superior Court.

31
32 3. By opinion and order dated January 8 and February 14, 2003, respectively, the
33 Clark County Superior Court reversed the county decision and held that the FEIS
34 complies with the procedural and substantive requirements of SEPA. As a result the
35 court vacated the county decision denying the CUP and covenant release and remanded
36 the matter to the county "for reconsideration on the record in light of the court's ruling
37 that the [FEIS] is in compliance with the procedural requirements of SEPA and the
38 Project's identified significant adverse environmental impacts can reasonably be
39 mitigated" (p. 2 of the Order in the matter of Case no. 022016182, Superior Court of
40 Clark County, February 14, 2003).

41
42 4. By Resolution No. 2003-03-14 dated March 18, the BCC remanded the matter
43 to the examiner. On March 31, 2003, after consulting with the examiner, Clark County
44 officials mailed written notices to parties of record inviting them to send written
45 arguments by April 15, 2003 regarding the remanded applications. On April 18, the
46 county conveyed the record to the examiner, including timely responses to the March 31

1 notice. This final order is the examiner's decision on reconsideration in light of the
2 court's ruling.

3
4 5. The principal issue on remand is the impact of the superior court judgment and
5 SEPA on the CUP, SWZP and covenant release applications; particularly whether the
6 county must find that the proposed landfill will comply with applicable land use
7 standards if, as a matter of law, all significant adverse environmental impacts can be
8 mitigated to comply with minimum public health and safety standards. The examiner
9 concludes that an adequate FEIS does not compel approval. Nevertheless it has an
10 impact on the analysis and changes the results of the prior decision. For the reasons in
11 part B of this decision, the examiner approves the CUP, SWZP and covenant release,
12 subject to conditions.

13 **B. DISCUSSION ON THE MERITS**

14
15 1. The record in this case is large. The record before the examiner on remand
16 includes all exhibits in the record on January 3, 2002, the February 14, 2002 examiner
17 decision, the opinion and order of the superior court, Resolutions 2002-04-09 and 2003-
18 03-14, the March 31, 2003 notice, and the 59 comments received in response to the
19 notice. The record physically before the examiner does not include the arguments of the
20 parties before the superior court except the excerpt attached to the applicant's argument
21 (Exhibit LIX).

22
23 2. The examiner describes the proposed use and relevant context at length in the
24 February 14, 2002 decision. The examiner refers readers to that decision rather than
25 repeating here what it says. To the extent it is not inconsistent with this final order, the
26 examiner incorporates by reference and adopts as his own the findings and conclusions in
27 the February 14, 2002 final order. Where the findings in this final order on remand are
28 inconsistent with the findings in the February 14, 2003, the examiner rejects the findings
29 in the February 14 decision and relies on the findings in this final order on remand.

30
31 3. Based on the opinion and order of the superior court, the FEIS passes muster
32 under SEPA. That is, the FEIS identifies and presents a reasonably thorough discussion
33 of all significant aspects of the probable environmental consequences and shows that
34 adverse consequences can be mitigated, based on the rule of reason and case precedent.
35 The court cited the following cases as precedent: *Norway Hill Preservation and*
36 *Protection Ass'n v. King County Council*, 87 Wn2d 267, 279, 552 P2d 674 (1976),
37 *Weyerhaeuser v. Pierce County*, 124 Wn2d 26, 873 P2d 498 (1994), *Organization to*
38 *Preserve Agricultural Lands ("OPAL") v. Adams County*, 128 Wn2d 869, 913 P2d 793
39 (1996), and *City of Des Moines v. Puget Sound Regional Council*, 98 WnApp 23 (1999).
40 Therefore, consistent with the court's opinion, the examiner rejects the statement of
41 SEPA-related issues at pp. 13 and 14 and the findings at pp. 23 through 58 of the
42 examiner's February 14, 2002 order as they relate to SEPA adequacy. In its place, the
43 examiner finds that the FEIS complies with the procedural requirements of SEPA, and
44 that the significant, probable, adverse environmental impacts of the proposed use can
45 reasonably be mitigated (i.e., mitigation is feasible by means of phased review and
46 conditions of approval), based on substantial evidence in the record. The examiner

1 believes this change is needed to conform the county's decision to the plain meaning and
2 express requirements of the order and opinion of the superior court.

3
4 4. Although the court vacated the county decision regarding the CUPs and
5 covenant release (and presumably the SWZP) and required the county to reconsider those
6 decisions, the court did not direct the county to approve those applications. The
7 applicant argues that the superior court determination compels the county to approve the
8 applications.¹ The opponents disagree.² County staff did not respond to the merits of the
9 applications in light of the superior court judgment. The issue presented by these facts is
10 whether and how the superior court judgment that the FEIS is adequate under SEPA
11 affects the analysis of applicable county land use approval criteria for the applications.
12 The examiner believes this is a question of law. The examiner believes that the answer to
13 that question is somewhere between the two extremes argued by counsel for the applicant
14 and counsel for the SEPA appellants.

15
16 5. The examiner finds that the superior court decision does not compel the county
17 to approve the CUP, SWZP or covenant release based on the plain meaning of the words
18 in the opinion and order (i.e., the absence of an order requiring the county to approve the
19 applications or addressing the merits of the CUP and SWZP) and on the differences
20 between the standards for an FEIS under SEPA and the standards for a CUP, SWZP and
21 covenant release under the Clark County Code (i.e., the difference between providing
22 information to be used in making a decision and the merits of the decision itself). What
23 the applicant argues is that the county must approve an application for which an FEIS
24 shows all significant adverse environmental impacts can be mitigated to comply with
25 minimum public health and safety laws. The examiner is not persuaded by the record
26 that the applicant's argument is correct generally. But see finding B.5.e below.

27
28 a. Counsel for the applicant highlights the emphasis the superior court put
29 on the phased nature of the permitting process for the landfill and recycling center. This
30 phasing allows greater refinement and testing of physical and operational assumptions
31 and plans before the project can proceed. Counsel for the applicant argues as follows:

32
33 The court was persuaded that at a minimum, ECR must show 100 percent
34 compliance with 25 pages of Ecology regulations before one item of waste
35 is accepted. The court further understood that authority to construct this
36 project will occur when all of the remaining permits identified in Exhibit
37 B are issued, and the impacts are addressed to the satisfaction of the
38 Department of Ecology, Department of Health, Clark County and City of
39 Vancouver. It is this phased permitting process that insures that ECR will
40 address and mitigate all impacts before the project is operational.

¹ At p. 3 of Exhibit LIX, counsel for the applicant argues "... ECR[C] satisfies most of the conditional use permit simply by reason of the superior court's decision..."

² At p. 3 of Exhibit LVIII, counsel for the SEPA-appellants argues "... It would be wrong to read into the [superior court] Order more than is stated in the opinion... [T]he adequacy of the FEIS does not determine the outcome."

1
2 b. Counsel for the SEPA appellants argues the CUP, SWZP and covenant
3 release applications provide the next phase of the review as follows:
4

5 The present review of the conditional use permits, solid waste zoning
6 permit and covenant release is the “later permitting” that the court
7 mentions. If it is not timely for a hearings examiner to demand that
8 compliance with rule and code requirements be deemed reasonably likely
9 prior to approving a FEIS, that is only because, in the court’s view,
10 compliance will be ensured prior to approving any individual permits. In
11 other words, the time for careful assessment and strict requirements is
12 now.
13

14 c. The examiner acknowledges the emphasis the superior court gave to
15 phasing of an application being permitted as the basis for a conclusion under SEPA. The
16 court includes the following statement from *OPAL*:
17

18 The two phases (unclassified use and operating permit conditions) are not
19 interdependent; it would not be inconsistent for the county to decide that a
20 particular site is appropriate for a landfill generally but that a particular
21 design is unsatisfactory. Citing 128 Wash2d 869 at 881 (1996).
22

23 d. The examiner also acknowledges public discomfort and distrust with
24 relying on future phased review to sustain the burden of proof under present applicable
25 standards that will not be revisited in the future, particularly where most of that phased
26 reviewed will occur without public notice or rights to participate and appeal. However
27 phased review is permitted to meet the applicant’s burden under SEPA as a matter of law.
28

29 e. To the extent future phased review and mitigation of probable
30 significant adverse environmental impacts will address applicable county approval
31 standards, the examiner believes he is required by law to find such phased review and
32 mitigation are adequate to meet the applicant’s burden at this stage of the process. The
33 examiner understands this to be the implication of the superior court opinion and *OPAL*
34 and the other cases cited by the court. This requires the examiner to make a section-by-
35 section review of the applicable standards for the CUP, SWZP and covenant release to
36 determine whether phased review and mitigation of probable significant adverse
37 environmental impacts will address all applicable county approval standards.
38

39 i. The CUP, SWZP and covenant release applications are much
40 more closely associated with the initial phase of site suitability than with building and
41 operational permits, because the FEIS was prepared to enable the county to make the
42 initial decision about the CUP and SWZP. The permits in this case are similar to the
43 “Unlisted Use Permit” in *OPAL* in that they address site suitability rather than final
44 engineering and operational details, based on the superior court decision and the cases
45 cited therein.
46

1 6. CCC 18.410.025 requires an applicant for a CDL landfill or recycling center to
2 obtain a conditional use permit and a solid waste zoning permit. A conditional use
3 permit is subject to the standard in CCC 18.404.060.A.³ The solid waste zoning permit is
4 subject to the standards in CCC 18.410.055.⁴ The examiner addresses the standards in

³ CCC 18.404.060.A provides as follows:

In order to grant any conditional use, the hearings examiner must find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be significantly detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the county.

⁴ CCC 18.410.055 provides as follows:

Whenever a use, or the location thereof, is permitted only if a conditional use permit is granted as provided by this chapter, the use and its location may be allowed subject to the following:

- A. Before such approval shall be given, the approval authority shall find:
 - 1. That the use will not prevent the orderly and reasonable use and development of surrounding properties or of properties in adjacent zones;
 - 2. That all public or private utilities necessary for the use are available, and that the roads serving the use are adequate to accommodate the type and extent of vehicular traffic.
 - 3. That the reclamation plan submitted by the applicant for the proposed use and any expansion clearly demonstrates that the site as reclaimed may be utilized for uses permitted within the zoning district in which it is located.
 - 4. That the proposed use and any expansion does not impair or impede the realization of the objective of the Comprehensive Plan, and it would not be detrimental to the public interest to grant such proposed use.
- B. In making such findings, the approval authority shall consider, among other things, the following criteria:
 - 1. The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any such conditional uses;
 - 2. The conservation of property values and the encouragement of the most appropriate uses of land;
 - 3. The effect that the location of the proposed use may have upon the creation of undue increase of vehicular traffic congestion on public streets or highways;
 - 4. The availability of adequate and proper public or private facilities for the treatment, removal, or discharge of sewage, refuse, or other effluent (whether liquid, solid, gaseous, or otherwise) that may be caused or created by or as a result of the use;
 - 5. Whether the use, or materials incidental thereto or produced thereby, may give off obnoxious gases, odors, smoke, or soot;
 - 6. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration, or noise;
 - 7. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by Clark County or by other competent governmental agency;
 - 8. To the necessity for suitably surfaced space for purposes of off-street parking of vehicles incidental to the use, and whether such space is reasonably adequate and appropriate and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be had;
 - 9. Whether the plot area is sufficient, appropriate, and adequate for the use and the reasonably anticipated operation and expansion thereof;
 - 10. Whether the use to be operated is unreasonably near to a church, school, theater, recreational area, or other place of public assembly;

1 CCC 18.410.055.B first, because they provide a basis for a response to the somewhat
2 more general standards in CCC 18.410.055.A. The results of the analysis of that section,
3 in turn, provide a basis for a response to the even more general CUP standard.

4
5 7. The examiner considered the criteria of CCC 18.410.055.B at pp. 58 to 69 of
6 the February 14, 2002 decision. The examiner reconsiders those findings below. The
7 superior court did not address these findings specifically.

8
9 a. CCC 18.410.055.B(1) provides, “the character of the existing and
10 probable development of uses in the district and the peculiar suitability of such district
11 for the location of any such conditional uses” is a relevant consideration.

12
13 i. The site is in the UH-20 (Urban Holding - 20-acre minimum lot
14 size) zone and the S (Surface Mining) combining district.⁵ The following uses are
15 permitted uses in the UH zones:

- 16
17 A. Single-family dwellings and accessory buildings;
18 B. Agriculture and forestry, including any accessory buildings and
19 activities. Commercial uses supporting agricultural and
20 forestry resource uses, such as packing, first stage processing
21 and processing which provides value added to resource
22 products;
23 C. Silviculture;
24 D. Roadside stands not exceeding two hundred (200) square feet
25 in area, exclusively for the sale of agricultural products locally
26 grown, and set back a minimum of twenty (20) feet from any
27 abutting right-of-way or property line;
28 E. Quarters, accommodations or areas for transient labor, such as
29 labor cabins or camps;
30 F. Publicly owned recreational facilities, services, parks and
31 playgrounds;

-
11. Whether a hazard to life, limb, or property because of conditions created or which may
be created by reason or as a result of the use, and what measures could be effectuated to
eliminate or mitigate any such hazards;
12. What restrictions should or should not be imposed in order to secure the purposes of this
chapter and to protect the public and surrounding property owners; and
13. The extent to which any of the criteria contained herein does not apply.

⁵ According to the zoning map in the GIS packet in Exhibit 278, the site is zoned MG (Mining). But there is no MG zone. The closest thing to it is the S (Surface Mining) combining district. The examiner understands the county intended to create a base zone for mining after adopting the 1994 comprehensive plan, but it has not done so. That creates some uncertainty about the zoning of the landfill site. According to the Staff Report, the site is zoned UH-10. In the February 14, 2002 decision the examiner assumed the base zone is UH-20, but it is not evident why. The examiner still assumes the site is zoned UH-20, but the evidence on that point is not compelling. If a different base zone applies, i.e., UH-10 or AG-20, it could affect the analysis under CCC 18.410.055.B(1), because land contiguous to the site across 192nd Avenue is zoned UH-10 and AG-20 and is now and will continue to be used for purposes that the Solid Waste Management Plan identifies as most conflicting with a landfill.

- G. Family day care centers;
- H. Utilities, structures and uses including but not limited to utility substations, pump stations, wells, water shed intake facilities, gas and water transmission lines. (CCC 18.306.020)

The following uses are permitted by CUP in the UH zones:

- A. Churches.
- B. Cemeteries and mausoleums, crematoria, columbaria, and mortuaries within cemeteries...
- C. Public or private schools, but not including business, dancing or technical schools.
- D. Golf courses.
- E. Kennels.
- F. Riding stables.
- G. Private recreational facilities...
- H. Veterinary clinics.
- I. Government facilities, including fire stations, ambulance dispatch facilities and storage yards, warehouses, or similar uses.
- J. Private ambulance dispatch facility.
- K. Residential care homes. (CCC 18.306.030)

The following uses are permitted in the S combining district:

- A. Permitted.
 - 1. All uses allowed in the zone district with which this district is combined.
 - 2. Extractions from deposits of rock, stone, gravel, sand, earth and minerals.
- B. Conditional.
 - 1. Asphalt mixing.
 - 2. Concrete batching.
 - 3. Clay bulking.
 - 4. Rock crushing. (CCC 18.329.020)

ii. The examiner finds that the character of existing development in the Surface Mining combining district is primarily industrial, including mining, asphalt mixing and landfilling. These uses are characterized by land extensive activities that are not enclosed in a building, relatively large numbers of heavy trucks and equipment and considerable noise, dust and traffic. There are other uses in the combining district, including the home and winery on the English/Bjornson property to the west and the shooting range and park to the northeast. But they are not the predominant use. Landfilling would be consistent with the predominant character of existing uses in the Surface Mining combining district. Mining of the site has created a hole that the proposed use would fill. That hole --- rather than the zoning of the site --- makes the site

1 particularly suitable for a landfill. A landfill can be allowed in any zone. CCC
2 18.410.025.A.

3
4 iii. The UH districts allow development that is agricultural, very
5 low density residential, institutional or recreational in character. This is the probable
6 character of future development in the district based on existing zoning and
7 comprehensive plan map designations.⁶ Based on pp. F-10 to F-14 of Appendix F of the
8 Solid Waste Management Plan (“SWMP”), the character of a landfill most conflicts with
9 the character of residential and institutional uses.

10
11 iv. The applicant argues that the proposed use will be consistent
12 with the character of the uses in the UH-20 zone because impacts will be mitigated.⁷ The
13 examiner acknowledges impacts of the proposed use can and will be mitigated.
14 Mitigation will reduce the significance of the differences in character between the
15 proposed use and other existing and probable uses in the UH districts. But mitigation
16 will not change the character of the use from an industrial one into an agricultural,
17 residential, recreational or institutional one, if at all, until 2050 at the soonest.

18
19 b. CCC 18.410.055.B(2) provides, “the conservation of property values
20 and the encouragement of the most appropriate uses of land” is a relevant consideration.
21 This is really two considerations: (1) conservation of property values, and (2) encourage-
22 ment of the most appropriate uses of land.

23
24 i. The examiner addressed the issue of property value impacts at
25 pp. 64-66 of the February 14, 2002 decision. The examiner concluded that discussion as
26 follows:

27
28 The proposed landfill does not conserve the value of surrounding
29 residential, commercial, mixed use and institutional land, with
30 effects likely to occur to a distance of at least one-half mile of the
31 boundaries of the site if not more.

32
33 ii. In one sentence (lines 20-21 on p. 65 of the February 14, 2002
34 decision), the examiner found support for the applicant’s argument that the landfill would
35 not affect property value unpersuasive, because, among other reasons, the appraiser who
36 provided that support “assumes certain impacts will not occur, which the examiner has

⁶ Although the purpose of the UH-20 district includes preservation of land in large parcels for industrial or office use, the UH districts do not allow such uses. The land will have to be rezoned before it can be used for purposes other than those listed above. Therefore such uses are speculative.

⁷ The applicant also argued that “the site will not be redeveloped for uses permitted by the UH-20 zone.” The examiner finds this is speculative and incorrect as a matter of law. Nothing precludes the site from being developed for uses permitted in the UH district in the future. The list above recounts what uses are permitted outright and conditionally in the UH district. The proposed use is consistent with the UH district minimum lot size regulations, because it will not result in a division of land. However the proposed landfill does not need to be approved to achieve this result; CCC 18.306 already restricts lot size.

1 found are probable including excessive noise and particulate emissions.” Based on the
2 superior court judgment, mitigation is feasible that will reduce noise levels and
3 particulate emissions to not more than that permitted by local, state and federal
4 regulations. It would be inconsistent with that judgment to find that noise levels and
5 particulate emissions will exceed those standards. The examiner finds particulate
6 emissions and noise levels will not exceed those standards. However the examiner stated
7 other reasons why the appraiser’s report was unpersuasive and why the anecdotal and
8 other evidence offered to the contrary was more persuasive. The superior court judgment
9 did not address this issue, because property value is not an element of the environment;
10 therefore, it is not relevant to the SEPA analysis. The examiner is persuaded by the
11 research studies and testimony by numerous area Realtors that the landfill will have a
12 relatively small adverse impact on property value (3 to 6 percent) within about one-half
13 mile of the site, and that the effect will slowly decline over the duration of the use as the
14 landfill is operated consistent with the applicant’s representations and the conditions of
15 approval of this decision. Reducing the impacts of the use will reduce and shorten the
16 duration of its adverse impact on property values. Reducing the height of the fill is one
17 mitigation measure the applicant has not proposed. Such a reduction in the height of the
18 fill would reduce the adverse visual impact of the landfill.

19
20 iii. The examiner addressed the issue of whether the landfill
21 encourages the most appropriate use of land at pp. 63-64 of the February 14, 2002
22 decision. The examiner concluded it does not encourage the most appropriate use of
23 land. The examiner finds nothing in the superior court decision warrants a finding to the
24 contrary.

25
26 iv. In summary the examiner finds that the proposed use will not
27 provide infrastructure needed for existing or probable uses. It will not provide services
28 directly to existing or probable uses. It will cause an objective increase in particulates,
29 noise and truck traffic. Although these impacts are not significantly adverse under SEPA
30 if mitigated, they discourage rather than encourage the use, development and enjoyment
31 of land to the west, southwest, southeast and east for the purposes for which it is zoned
32 and developed by making use of that land for those purposes less desirable. The impacts
33 may not violate air, noise and traffic standards, assuming the use complies with
34 conditions of approval, but the objective increase in adverse impacts is enough to sustain
35 a finding that the use will not encourage the existing and probable use of land to the west,
36 southwest, southeast and east.

37
38 (A) In Exhibit LIX, counsel for the applicant argues the
39 only land that is relevant to this standard is the site itself. Thus, because landfilling
40 encourages the most appropriate future use of the site, it adequately addresses this
41 consideration.

42
43 (B) The examiner disagrees with the premise of the
44 foregoing argument. The meaning of the words in CCC 18.410.055.B(2) is not plain.
45 That section does not say “encourage the most appropriate use of the site” or even “of the
46 land.” It says “encourage the most appropriate use of land.” When read in context, the

1 examiner finds “land” includes the site and surrounding area, because the consideration is
2 intended to help the decision-maker decide whether the proposed use will be significantly
3 detrimental to people or property in the area and whether it will prevent the orderly and
4 reasonable use and development of surrounding properties or of properties in adjacent
5 zones. These standards relate to the area, not just to the site in question. The
6 considerations in CCC 18.410.055.B should be construed accordingly.

7
8 (C) The examiner also disagrees with the inference that the
9 applicant encourages the probable future use of the land by filling it. On the contrary,
10 once the site is reclaimed as required by existing mining permits, which is anticipated
11 soon, it can be used for purposes permitted by the zone. By delaying redevelopment for
12 47 to 58 years, the landfill discourages use of the site for permitted uses in the base zone
13 at least for a substantial term of years.

14
15 c. CCC 18.410.055.B(3) provides, “the effect that the location of the
16 proposed use may have upon the creation of undue increase of vehicular traffic
17 congestion on public streets or highways” is a relevant consideration. The examiner
18 considered traffic congestion in the discussion at pp. 33-36 of the February 14, 2002
19 decision. The examiner found that the proposed use will not create an undue increase in
20 traffic, because, if approved, the use will be subject to condition of approval A-40 that
21 prohibits the use from causing more than a certain number of trips. If the use does not
22 exceed that number, roads and intersections can accommodate traffic from the proposed
23 use. The use will cause an objective increase in vehicle trips to and from the site,
24 particularly heavy truck trips, increasing congestion on area roads. However this effect is
25 not “undue” as a matter of law.

26
27 d. CCC 18.410.055.B(4) provides, “the availability of adequate and
28 proper public or private facilities for the treatment, removal, or discharge of sewage,
29 refuse, or other effluent (whether liquid, solid, gaseous, or otherwise) that may be caused
30 or created by or as a result of the use” is a relevant consideration. The examiner finds the
31 proposed use can and will provide for treatment, removal, or discharge of sewage by
32 means of city sewers. Solid waste will be landfilled or shipped off-site.

33
34 e. CCC 18.410.055.B(5) provides, “whether the use, or materials
35 incidental thereto or produced thereby, may give off obnoxious gases, odors, smoke, or
36 soot” is a relevant consideration. The examiner addressed this issue at pp. 36-37 and 66
37 of the February 14, 2002 decision.

38
39 i. In the February 14, 2002 decision, the examiner was persuaded
40 that “the impact of the proposed development on air quality, other than due to particulate
41 emissions, including carbon monoxide and other fumes from vehicles on the site, is not
42 potentially significantly adverse if mitigation is provided.” The examiner also found that
43 “[t]he impact of the proposed development on air quality due to particulate emissions is
44 potentially significantly adverse, notwithstanding mitigation.” Due to what he believes
45 are methodological flaws, the examiner “was not persuaded the FEIS adequately
46 addresses air quality impacts due to particulate emissions.” The examiner also found

1 “[t]he FEIS could be supplemented to more thoroughly and clearly address particulate
2 emissions in a real world context and to remedy the methodological problems and
3 omissions identified by the examiner before approval of the CUP and SWZP.”
4

5 ii. The examiner continues to find that the air quality analysis
6 provided by the applicant does not include an analysis of particulate impacts based on
7 real-world conditions; it unduly discounts high wind conditions. Based on the superior
8 court order, the FEIS is adequate to address air quality impacts, and further evidence is
9 not needed before the county decides whether to approve the CUP and SWZP. To the
10 extent the February 14, 2002 decision is inconsistent with the court order and opinion in
11 this regard, the examiner rejects it. It is implicit in the court’s opinion that, if the amount
12 of particulates does not exceed standards set or enforced by WSDOE or the Southwest
13 Clean Air Agency, it is not significant under SEPA. But there will be an objective
14 increase in particulate levels, which is relevant under this consideration.
15

16 iii. The examiner found that smelting on the site could produce
17 obnoxious odors and gases. A condition of approval can limit or prohibit on-site
18 smelting so gases are not produced or are not obnoxious due to smelting.
19

20 f. CCC 18.410.055.B(6) provides, “whether the use will cause disturbing
21 emission of electrical discharges, dust, light, vibration, or noise” is a relevant
22 consideration. The examiner addressed noise at pp. 37-40 and 66 of the February 14,
23 2002 decision.
24

25 i. County staff and the examiner found that the proposed use
26 would cause noise that exceeds WSDOE standards at the property line. To reduce the
27 maximum noise level, the applicant proposed to prohibit certain noise-producing
28 activities from being conducted at the same time in the belief that doing so would bring
29 the use into compliance with WSDOE and County noise standards. County staff
30 recommended the examiner require the applicant to provide evidence the noise-related
31 use restrictions work to comply with state noise standards as a condition of approval. See
32 recommended conditions A-54 and A-55. The examiner rejected that approach. But the
33 court found it is authorized by SEPA and case law. Therefore the examiner rejects the
34 findings to the contrary in the February 14, 2002 decision.
35

36 ii. In the February 14, 2002 decision, the examiner concluded the
37 applicant’s noise analysis did not include such noise sources as back-up alarms and
38 banging tailgates. The examiner observed that noise from these sources is frequent,
39 intermittent and disruptive. The examiner found that these noise sources should be
40 included, because county noise standards do not exempt emergency alarms or peak,
41 instantaneous noise levels.⁸ The examiner also concluded the UH-20 zone is residential

⁸ CCC 9.14.010(3) prohibits “frequent, repetitive or continuous sounds in connection with ... the operation of any internal combustion engine ... within a residential area.” CCC 9.14.010(5) prohibits “[t]he making of any loud and raucous sound within 1000 feet of any school ... which unreasonably interferes with the use of such facility or with the peace, comfort, or repose of persons therein.” The examiner relies in part

1 for purposes of the WAC standard, because single family homes are permitted outright in
2 the zone. The applicant's noise study assumed the UH-20 zone is an industrial zone and,
3 therefore, applied a different noise standard. In any future study of noise, the applicant
4 should be required to include all noise sources and to comply with noise standards at the
5 property line of the site, assuming the abutting land to the west and east is residential.

6
7 iii. The examiner finds that the proposed use will result in an
8 objective increase in noise levels generated on the site. Although noise emissions can be
9 regulated so they do not exceed WSDOE and county standards, an objective increase in
10 noise levels can be disturbing to people who now live or attend schools or church nearby.
11 The examiner does not agree with the applicant's argument that "the examiner must find
12 that the proposal will not cause disturbing emission of noise and dust." What is
13 "disturbing" is not defined with reference to noise standards.⁹

14
15 iv. The examiner finds that noise that complies with county and
16 state standards will not be disturbing to people who move to or start to work or attend
17 school or parks in the area only after the landfill is established. That noise could be
18 disturbing to people who now reside or attend school or church in the area, because of the
19 difference between pre- and post-landfill conditions. However the examiner would have
20 to speculate to conclude that the difference between pre- and post-development noise
21 levels will be disturbing. The examiner relies on the inference that noise levels will not
22 be disturbing, because they will not exceed state and county noise standards at the
23 property line assuming surrounding land to the east and west is residential. Further
24 study, refinement of protocol and monitoring of the site is needed to ensure noise levels
25 do not exceed state and local standards in fact. Conditions A-53 through A-56 address
26 this issue.

27
28
29
30 g. CCC 18.410.055.B(7) provides, "whether the operations in pursuance
31 of the use will cause undue interference with the orderly enjoyment by the public of
32 parking [*sic*] or of recreational facilities, if existing, or if proposed by Clark County or by
33 other competent governmental agency" is a relevant consideration. The examiner
34 addressed this issue at p. 67 of the February 14, 2002 decision. The examiner found that
35 the landfill will not unduly interfere with the orderly enjoyment of the English Shooting
36 Range or Harmony Sports Fields northeast of the site, but will unduly interfere with the
37 use of the future park the City of Vancouver will develop at 1st Street and 192nd Avenue

on these standards to conclude that all noise sources are relevant. The examiner acknowledges the site is not in a "residential area" for purposes of CCC 9.14. See CCC 9.14.015.

9 CCC 18.329.030.E provides that "[m]aximum permitted noise levels [in the Surface Mining combining zone] shall be according to the provisions of the Washington Administrative Code (WAC) 173-60." But the landfill also is subject to standards in CCC 18.404.060 and CCC 18.410.055.A and B to which noise is relevant. The standards in CCC 18.404 and 18.410 do not refer to the WAC standard for judging noise. They use different words (e.g., "disturbing"). The examiner assumes when different words are used, they mean different things absent context or legislative history in the record to the contrary.

1 “because of the proximity of the landfill to the park site and because people of reasonable
2 sensibilities using a park situated so close to the landfill would perceive and be affected
3 by noise, dust and traffic from the landfill.”

4
5 i. Counsel for the applicant argues the examiner must find the
6 landfill will not unduly interfere with use of the future park, because impacts from traffic,
7 noise and particulates can be mitigated, based on the superior court decision.

8
9 ii. The examiner understands the superior court found that all
10 significant adverse environmental impacts could be mitigated to some adopted standard,
11 and compliance with those standards could be considered by means of phased permitting
12 and assured by means of continuing enforcement. One reasonable inference from the
13 court’s opinion is that mitigation will prevent the landfill from unduly interfering with
14 the orderly enjoyment of the future park. But “orderly enjoyment” is not the same as
15 “compliance with minimum public health and safety standards” as a matter of law.

16
17 iii. The landfill will cause traffic that will increase congestion.
18 Other landfill activities will increase noise and dust emitted from the site. Whether those
19 impacts will unduly interfere with the “orderly enjoyment” of the future park depends on
20 whether “orderly enjoyment” implies more than simply the level of enjoyment secured by
21 minimum public health and safety laws. Because the consideration does not cite to those
22 minimum standards in any way, the examiner is not persuaded the term should be
23 construed as argued by counsel for the applicant.

24
25 iv. In the February 14, 2002 decision, the examiner construed
26 “undue interference” to mean “an excessive or immoderate impact on the use or
27 enjoyment of a recreational facility to a person of reasonable sensibilities.” The
28 examiner re-adopts that construction. If a reasonable person would choose not to use the
29 park or would curtail his or her activities there or would suffer from respiratory or
30 auditory effects, this would be undue interference.

31
32 v. Whether the use would have such impacts on the future park is
33 unclear from the record and would invite speculation. The mitigation proposed by the
34 applicant will reduce the significance of the impact of additional noise and dust and will
35 prevent increased congestion attributable to the landfill from exceeding a certain amount
36 and preserves at least minimum levels of service at affected intersections. The future
37 park could be accessed in a way that minimizes the impact of landfill-related traffic and
38 could incorporate landscaping, berms and walls that reduce the noise and particulate
39 levels on the park site to the extent that the landfill will not unduly interfere with use of
40 the park by a reasonably sensitive person. Therefore the examiner is unable to conclude
41 the landfill will violate this consideration. The examiner rejects the finding at p. 67 of
42 the February 14, 2002 decision that the landfill will unduly interfere with use of the
43 future park. Addressing this standard as it relates to a park not in existence requires the
44 examiner to engage in speculation. Speculation is not substantial evidence nor a
45 reasonable inference from it.

1 h. CCC 18.410.055.B(8) provides, “the necessity for suitably surfaced
2 space for purposes of off-street parking of vehicles incidental to the use, and whether
3 such space is reasonably adequate and appropriate and can be furnished by the owner of
4 the plot sought to be used within or adjacent to the plot wherein the use shall be had” is a
5 relevant consideration. The examiner finds the proposed use can accommodate adequate
6 on-site parking, given the large area of the site.

7
8 i. CCC 18.410.055.B(9) provides, “whether the plot area is sufficient,
9 appropriate, and adequate for the use and the reasonably anticipated operation and
10 expansion thereof” is a relevant consideration.

11
12 i. The examiner addressed this issue at p. 67 of the February 14,
13 2002 decision largely by referring back to the SEPA discussion. Based on the superior
14 court decision, the FEIS complies with SEPA. Therefore the examiner rejects the finding
15 in the February 14, 2002 decision that the landfill site is not sufficient, appropriate and
16 adequate for the landfill for the reasons stated in the SEPA analysis.

17
18 ii. Counsel for the applicant argues the examiner must find the site
19 area is sufficient, appropriate and adequate for the landfill “so long as required setbacks
20 and other dimensional requirements can be met...” The examiner disagrees. The
21 consideration is so vague and broad that it is not clear to the examiner what is required to
22 address it. Certainly meeting setbacks and dimensional requirements is a prerequisite.
23 But the question is how much more is required.

24
25 iii. The examiner finds that what is “sufficient, appropriate, and
26 adequate” depends on the analysis of the other criteria and considerations in CCC
27 18.410.055.A and B. To the extent the examiner finds that the landfill does not or will
28 not adequately address those other criteria and considerations, the site size is not
29 sufficient, appropriate, and/or adequate. To the extent the examiner finds that the landfill
30 does or will adequately address those other criteria and considerations, the site size is
31 sufficient, appropriate, and adequate. The decision on the merits and the weight the
32 decision-maker gives to the other considerations will dictate the result for this
33 consideration.

34
35 j. CCC 18.410.055.B(10) provides, “whether the use to be operated is
36 unreasonably near to a church, school, theater, recreational area, or other place of public
37 assembly” is a relevant consideration.

38
39 i. The examiner addressed this issue at pp. 67-68 of the February
40 14, 2002 decision. The examiner found the term “unreasonably near” to be vague and
41 construed it to mean “within a distance that adverse impacts of the use would unduly
42 (i.e., more than immoderately) interfere with or detract from the use of the church and/or
43 schools.” In summary the examiner was persuaded that the church and schools were too
44 close to the landfill, because mitigation would not render adverse impacts insignificant or

1 improbable.¹⁰ Based on the superior court decision, the examiner now finds mitigation
2 for noise and particulate impacts will render those impacts insignificant.

3
4 ii. Landfill-related traffic would increase hazards to school
5 children who walk to school from subdivisions northeast and west of the site over roads
6 that are not improved with sidewalks. Because of the proximity of the site to the schools,
7 children from subdivisions to the northeast and west must walk past the site to reach the
8 school. If the site was situated farther from a school, this would not be the case.
9 Although the landfill will not generate pedestrians, it will generate the traffic that
10 increases the hazard to those pedestrians. This impact can be mitigated by installing a
11 sidewalk along 1st Street or bussing more children. The applicant is required to improve
12 the frontage of the site with a wider pavement, drainage, curb and sidewalk, but does not
13 propose to make off-site improvements and is not required to do so. Where sidewalk
14 does not exist and will not be provided by the applicant or other road projects, the hazard
15 to pedestrians and bicyclists will remain.

16
17 iii. Counsel for the applicant argues the examiner must find that
18 the site is not too close to a school or church (or park), because “the impacts from noise,
19 dust and traffic are all specifically controlled by state and local provisions designed to
20 protect adjacent uses and property owners. Compliance with these state and local
21 provisions is adequate mitigation under SEPA and the County’s code.” (p. 24, Exhibit
22 LIX)

23
24 iv. The examiner is not persuaded that compliance with state and
25 local provisions will ensure the site is not “unreasonably near” three schools, a church
26 and a future city park. The two issues are different. Mitigation will reduce the extent
27 and significance of the impacts including hazards to pedestrian and bicycle safety. But
28 there is no objective measure for when a landfill is too close to a school, church and park,
29 and the examiner does not believe the law should be construed to create one (i.e., to
30 require the county to find the site is not too close because the landfill will not violate
31 traffic, air quality or noise regulations), because that effectively would be the same as
32 requiring the county to approve the CUP and SWZP because the FEIS is adequate. If that
33 is what is required, the CUP and SWZP standards have no meaning. The examiner does
34 not believe that was the intent of the BCC when it adopted the CUP and SWZP
35 regulations.

36

10 The examiner relied in part on testimony by the school district superintendent, who wrote as follows:

Loud or sudden noises generated in connection with the nearby landfill (particularly those associated with crushing operations) will occur, and will disrupt the daily school program, both in terms of indoor classroom activities and outside activities (e.g. recess, physical education classes, extracurricular programs) associated with the school program. There will also be a significant increase in traffic to and from the Proposed Project... Given numerous residential properties located in close proximity to the each school, many students either walk or bicycle to school. Landfill-related traffic will unavoidably impact this existing travel as children will pass the landfill site and pass trucks traveling to or from the site. (p. 5, Exhibit 994)

1 v. The church is across the street from the site. The schools and
2 park are cater-corner from it. The landfill sits between those uses and a sizable suburban
3 population served by them. It will impede their relationship by making it less safe and
4 less pleasant to travel between them and to use them. Based on p. F-12 of the SWMP,
5 homes, schools, churches and parks within 1320 feet of the site are least compatible with
6 a landfill. This site is within 1000 feet of those uses. If this consideration is to be given
7 any import, the landfill site is unreasonably close to the schools, church and park. Given
8 the existing roads and lotting pattern, the landfill could not be much closer to the schools,
9 church and park without physically encroaching on those uses. Mitigation will reduce
10 impacts, but it will not alter the proximity of these uses.

11
12 k. CCC 18.410.055.B(11) provides, “whether a hazard to life, limb, or
13 property because of conditions created or which may be created by reason or as a result
14 of the use, and what measures could be effectuated to eliminate or mitigate any such
15 hazards” is a relevant consideration.

16
17 i. The examiner addressed this issue at pp. 68-69 of the February
18 14, 2002 decision. The examiner concluded that the landfill would pose a hazard to
19 children who walk to school for the reasons discussed above. Nothing in the superior
20 court decision or otherwise in the record warrants a change in that conclusion.

21
22 (A) The evidence about pedestrian and bicycle traffic
23 conflicts. The observations of pedestrian and bicycle traffic on area streets reported in
24 the applicant’s traffic study is not compelling, because of the timing and limited duration
25 of those observations. The examiner is persuaded by the testimony of the school district
26 superintendent and by residents of the area that pedestrian and bicycle traffic commonly
27 travels along 1st Street and other streets in the vicinity.

28
29 (B) The fact that the proposed use does not cause
30 pedestrian trips does not make its effect on pedestrian safety irrelevant. The landfill will
31 cause vehicular traffic that exacerbates the risk to pedestrians and bicyclists even if the
32 traffic impacts of the landfill are limited by conditions of approval. The fact that the
33 county cannot compel the applicant to fix the problem to which the vehicular traffic
34 associated with the landfill will contribute except along the site frontage does not mean
35 the existence of the problem is irrelevant. On the contrary, it is precisely because a
36 solution to the problem cannot be compelled and is not proposed that the issue is relevant
37 and significant.

38
39 ii. In the February, 2002 decision, the examiner also found noise
40 and dust from the proposed use would pose a long-term hazard to the public health. The
41 examiner now rejects that finding. The applicant can rely on compliance with air quality
42 standards to ensure the particulate emissions from the landfill do not pose a long-term
43 hazard to public health and safety, based on the superior court order and case law.
44

1 I. CCC 18.410.055.B(12) provides, “what restrictions should or should
2 not be imposed in order to secure the purposes of this chapter and to protect the public
3 and surrounding property owners” is a relevant consideration.

4
5 i. The examiner addressed this issue at p. 69 of the February 14,
6 2002 decision. The examiner concluded that “the applicant failed to bear the burden of
7 proof that all conditions of approval of the permit are feasible...” The examiner hereby
8 rejects that conclusion and the remainder of paragraph I on page 69 of the February 14,
9 2002 decision and adopts by reference the findings in part C of this decision on remand.

10
11 8. Having considered the criteria in CCC 18.410.055.B, the examiner now
12 proceeds to review the SWZP application for compliance with the criteria in CCC
13 18.410.055.A in light of those considerations.

14
15 a. CCC 18.410.055.A(1) provides the county must find “that the use will
16 not prevent the orderly and reasonable use and development of surrounding properties or
17 of properties in adjacent zones.”

18
19 i. At pp. 69 of the February 14, 2002 final order, the examiner
20 found the SWZP application did not comply with this criterion. The examiner now
21 rejects that finding and adopts the following findings in response to this criterion.

22
23 ii. The terms “prevent”, “orderly” and “reasonable” in CCC
24 18.410.055.A(1) are ambiguous. The examiner construes those terms to have the
25 following meaning:

26
27 (A) “Prevent” means to stop or keep from happening.

28
29 (B) “Orderly” means consistent with the public plan for
30 development of the area (i.e., with the comprehensive plan and implementing
31 regulations).

32
33 (C) “Reasonable” means capable of use in a manner
34 permitted by existing law.

35
36 iii. The examiner concludes that the landfill will not prevent the
37 orderly and reasonable use and development of surrounding properties or properties in
38 adjacent zones, because such use and development can continue to occur notwithstanding
39 the impacts of the proposed landfill, provided the landfill is subject to the conditions of
40 approval as recommended by county staff with the amendments provided herein.

41
42 (A) As noted in the considerations of the factors in CCC
43 18.410.055.B, the use and development of surrounding land and land in adjoining zones
44 will not be as pleasant and enjoyable as it would be in the absence of the impacts from
45 the landfill. The landfill will cause an objective increase in adverse impacts due to noise,

1 particulates and traffic even if it complies strictly with all of the conditions of approval.¹¹
2 It will cause traffic congestion and will increase the hazard to pedestrians and bicyclists
3 due to the lack of off-site sidewalks and bicycle lanes. Those impacts will conflict with
4 the character of the surrounding lands in large part and will detract from the relationships
5 between the suburban neighborhoods in the vicinity and the institutions (schools, church
6 and park) in the vicinity. It will not encourage permitted development of surrounding
7 land. It will delay ultimate development of the site. It will not preserve property values.
8 In short the landfill will adversely affect existing and future development in the area.

9
10 (B) However the landfill will not prevent surrounding land
11 from being used for purposes permitted by zoning. It will not deprive the area of water
12 needed for reasonable use and development, assuming water quality measures are
13 effective. It will not deprive the area of healthy air needed for reasonable use and
14 development, as long as air quality measures are effective. It will not cause noise
15 sufficient to constitute a public nuisance under county enforcement regulations, as long
16 as noise mitigation measures are effective. It will not consume all of the available
17 capacity of roads in the area. Its traffic impacts are not so severe that they will prevent
18 surrounding land from being developed and used safely as long as people behave in a
19 manner that is reasonably prudent and lawful given the under-improved condition of
20 those roads. The landfill will not prevent the “orderly” use development of land, because
21 surrounding land and land in surrounding zones can be developed consistent with their
22 comprehensive plan and zoning designations. That use of land near the landfill will be
23 less pleasant due to its impacts and that some people may choose not to develop or
24 continue to live in the vicinity does not violate this criterion.

25
26 b. CCC 18.410.055.A(2) provides the county must find “that all public or
27 private utilities necessary for the use are available, and that the roads serving the use are
28 adequate to accommodate the type and extent of vehicular traffic.”

29
30 i. The examiner finds that all public utilities are available and
31 have capacity to serve the use, provided the applicant complies with conditions of
32 service.

33
34 ii. The examiner also finds that roads serving the site are adequate
35 to accommodate vehicular traffic. Pedestrian traffic is not relevant to this criterion. The
36 examiner rejects the finding to the contrary at p. 70 of the February 14, 2002 final order.

37
38 c. CCC 18.410.055.A(3) provides the county must find “that the
39 reclamation plan submitted by the applicant for the proposed use and any expansion
40 clearly demonstrates that the site as reclaimed may be utilized for uses permitted within

¹¹ To people who are especially sensitive to noise or air quality impacts or other changes in the environment, the increase may be significant enough to affect health and prevent use of existing development, but it is speculative that such effects will occur. Moreover the examiner does not understand the applicable standards are intended to address unusual sensitivities to such impacts. An expectation that the land use regulations will prevent impacts significant only to those especially sensitive to them is not “reasonable” as construed herein.

1 the zoning district in which it is located.” At p. 70 of the February 14, 2002 decision, the
2 examiner found the application complies with this standard. There is no reason in the
3 superior court decision or in the record for changing that finding.
4

5 d. CCC 18.410.055.A(4) provides the county must find “the proposed use
6 and any expansion does not impair or impede the realization of the objective of the
7 Comprehensive Plan, and it would not be detrimental to the public interest to grant such
8 proposed use.”
9

10 i. The examiner addressed this criterion at pp. 70-76 of the
11 February 14, 2002 decision, concluding that the applications both further and detract
12 from realization of the Comprehensive Plan, and that, on balance, they are not in the
13 public interest.
14

15 ii. Counsel for the applicant argued the landfill complies with this
16 standard, because it is consistent with the land use, transportation and economic
17 development elements of the Comprehensive Plan, and “the purpose section of the
18 County’s solid waste zoning code and portions of the SWMP identify the general need to
19 provide for solid waste disposal and the specific need to provide for disposal of
20 construction, demolition and land clearing waste [cit om]... The examiner previously
21 found that ‘approving the proposed use would further the realization of the
22 Comprehensive Plan as it relates to CDL landfills and recycling.’ Nothing more is
23 required.” (p. 17, Exhibit LIX) The applicant also argued that the need for the facility
24 (beyond the authority in the Zoning Code that allows a landfill and recycling center in the
25 zone) is irrelevant.
26

27 iii. On reconsideration, the examiner must amend the findings to
28 reflect the judgment of the superior court. In particular:
29

30 (A) In finding G.5.b.i at p. 71 of the February 14, 2002
31 decision, the examiner concluded the applicant failed to sustain the burden of proof that
32 the facility would not be located “on or adjacent to geologic features which could
33 compromise the structural integrity of the facility.” Based on the superior court opinion
34 and the cases cited therein, the examiner now rejects that finding, because the applicant
35 can meet this burden of proof by complying with recommended conditions of approval
36 and applicable provisions of the Washington Administrative Code and Uniform Building
37 Code.
38

39 (B) In finding G.5.b.xi at p. 75 of the February 14, 2002
40 decision, the examiner found the applicant did not sustain the burden of proof that the
41 land-fill would comply with WAC 173-304-460(2)(b)(ii) regarding particulate emissions.
42 Based on the superior court opinion and the cases cited therein, the examiner now rejects
43 that finding, because the applicant can meet this burden of proof by complying with
44 recommended conditions of approval.
45

1 (C) In finding G.5.c at p. 75 of the February 14, 2002
2 decision, the examiner found the applicant failed to show there was a need for a facility
3 of the size proposed. The examiner now rejects that finding, because the applicable
4 approval standards do not require the applicant to show a need for the facility, and the
5 applicant is not required to consider reducing the size of the facility as an alternative to
6 the proposal to comply with the procedural requirements of SEPA. By way of
7 explanation, the examiner considered “need” to help assign relative weights to relevant
8 provisions of the SWMP and Comprehensive Plan. If there was substantial evidence in
9 the record that there is a specific need for a CDL landfill, as opposed to the more general
10 need reflected in the SWMP and Zoning Ordinance, the examiner would have given
11 greater weight to the objectives that the landfill furthers. In this decision on remand, the
12 examiner does not consider need a relevant factor beyond the general provisions of the
13 SWMP, Comprehensive Plan and CCC Title 18.

14
15 iv. The examiner continues to find that the proposed landfill will
16 both further and impede realization of some relevant Comprehensive Plan policies.
17 Based on the plain meaning of the words in CCC 18.410.055.A(4), the issue is not
18 whether the proposal furthers those policies; the issue is whether it “impairs or impedes”
19 their realization. Therefore the examiner disagrees with the argument by counsel for the
20 applicant that the landfill complies with this criterion if it furthers any plan objectives.
21 The examiner construes CCC 18.410.055.A(4) to require consideration of all ways in
22 which the proposed use may impair or impede realization of the objectives of the
23 comprehensive plan. If the proposal has a neutral or positive effect, it is not relevant
24 except to the extent that effect avoids or mitigates the proposal’s negative impact on
25 realization of those policies.

26
27 (A) In place of the finding at p. 75 regarding Goal 2.3 and
28 Policy 2.3.1 of the land use element, the examiner adopts the following.

29
30 The landfill will impede realization of Goal 2.3 and Policy
31 2.3.1 of the land use element, because the landfill is not “locationally and functionally
32 integrated” with the surrounding area. It is not functionally integrated with the nearby
33 schools, church, park or residential neighborhoods. Because ultimate development of the
34 site will be deferred for 47 to 58 years, it cannot be functionally integrated with the
35 surrounding area for at least that long. To an extent the foregoing impediments to
36 integration are offset by the integration of the recycling center and landfill on the site,
37 reducing trips compared to a separate recycling center and landfill. Also the use of the
38 mined-out site for the landfill is a kind of vertical integration of uses on the site over
39 time.

40
41 (B) In place of the finding at pp. 75-76 regarding Policy
42 3.5.18 of the transportation element, the examiner adopts the following.

43
44 The landfill will both further and impede realization of
45 Policy 3.5.18 of the transportation element. To the extent a sidewalk does not exist along
46 the site frontage, the applicant is required to provide one. This furthers the policy.

1 However there are sections of street between and beyond the frontages of the site that
2 will not be improved, because they are off-site, and the county engineer has found that
3 hazards do not warrant off-site improvements. To the extent traffic generated by the
4 proposed use adds to the risk of accidents posed by the under-improved rights of way on
5 collector and arterial streets near the site, the landfill impedes realization of the goal of
6 pedestrian connections that are safe. However on balance the examiner concludes the
7 landfill will not impede realization of Policy 3.5.18, because the applicant will improve
8 the site frontage, which is all the County Code requires in the absence of a finding of
9 hazard by the county engineer.

10
11 (C) In place of the finding at p. 76 regarding the economic
12 development element, the examiner adopts the following.

13
14 The landfill will both further and impede realization of the
15 economic development element. It will impede realization of that element by deferring
16 ultimate development (and more jobs likely to follow from a less land-extensive use on
17 the site) for 47 to 58 years. It will offset that impact by providing jobs for the mean time.
18 On balance the examiner concludes the landfill will not impede realization of the
19 economic development element, because the site will be used for an economically viable
20 purpose and will be available for redevelopment after reclamation.

21
22 v. In place of finding G.5.e at p. 76 of the February 14, 2002
23 decision, the examiner adopts the following.

24
25 (A) Whether the application complies with CCC
26 18.410.055.A(4) depends on how much weight the decision-maker gives to the
27 comprehensive plan objectives (i.e., goals and policies) the landfill impairs or impedes
28 and how much the result is offset by the comprehensive plan objectives the landfill
29 furthers. The decision-maker can choose to give one objective more weight than another
30 or to disregard one objective if it conflicts with another one. If the balance is neutral or
31 positive, the landfill complies with CCC 18.410.055.A(4). If the balance is negative, the
32 landfill does not comply with CCC 18.410.055.A(4).

33
34 (B) Because the comprehensive plan objectives differ
35 substantially in character and clarity, and the standard is ambiguous, it is unclear to the
36 examiner how the BCC intended to strike the appropriate balance in a case such as this.

37
38 (C) Given the superior court judgment, proposed
39 mitigation and conditions of approval as amended, the general language in the SWMP
40 encouraging private parties to provide a CDL landfill, and the comprehensive plan
41 objectives the landfill achieves, the examiner concludes that, on balance, the proposed
42 uses do not impair or impede the objectives of the comprehensive plan.

43
44 vi. In place of finding G.5.f at p. 76 of the February 14, 2002
45 decision, the examiner adopts the following.

(A) The standard “in the public interest” is ambiguous. The examiner construes that standard to mean that the proposed land use will comply with the applicable approval standards in CCC 18.410.055.A in light of the considerations of CCC 18.410.055.B. The table on the next page summarizes the results of that analysis.

(B) As can be seen from the table, the examiner finds that the landfill does or can comply with CCC 18.410.05.A(1)-(3). Based on the discussion immediately above, the landfill complies with CCC 18.410.055.A(4). The landfill does or can comply with seven of the twelve considerations in CCC 18.410.055.B. It violates three of those considerations, and both complies with and violates two others. However the considerations are just considerations. They are not the approval standards. Failure to comply with one or more of the considerations does not compel the county to deny the application. The approval standards are in CCC 18.410.055.A. The criteria in CCC 18.410.055.B must be considered in making findings in response to CCC 18.401.055.A including in response to the “public interest” standard. The examiner has done so.

(C) As is also evident from the table, every approval standard and consideration in CCC 18.410.055 contains one or more terms that are ambiguous. The examiner identified and construed each ambiguous term in this order. But interpretations by the examiner are not entitled to deference by the BCC or the courts. Neither is the manner in which the examiner considered the criteria in CCC 18.410.055.B. Therefore, depending on how one construes these ambiguities and applies the considerations, the result could change significantly. It would be nice if the law was clearer.

<i>Subsection</i>	<i>Does comply</i>	<i>Does not comply</i>	<i>Summary of discussion</i>
A(1)	●		Landfill will not prevent orderly and reasonable use and development of surrounding properties, although it will detract from them. The meaning of “prevent”, “orderly” and “unreasonable” are questions of law.
A(2)	●		All public and private utilities necessary for the use are available, and roads serving the site are adequate. What is “adequate” is a question of law and fact.
A(3)	●		Landfill reclamation plan shows site can be used for some of the purposes permitted by UH-20 zone. What is the applicable zone is a question of law and fact.
B(1)	●	●	Landfill is consistent with existing and probable uses in S combining zone but not with probable uses in UH zone, even with mitigation. Whether UH zone uses are the probable future uses, and what is consistent with area character are questions of law and fact.

B(2)		•	Landfill will adversely affect property value and will not encourage most appropriate use of land. Whether landfill will affect property value is a question of fact. What uses are “most appropriate” and what “encourages” them is a question of law and fact.
B(3)	•		Landfill will not unduly increase traffic congestion if it complies with County LOS standards. Whether increase is “undue” is a question of law and fact.
B(4)	•		Landfill does or can adequately provide for sewage, refuse and effluent. What is “adequate” is a question of law and fact.
B(5)	•		Landfill will not emit obnoxious gas, odor or dust, because emissions will not exceed adopted air quality standards. It will increase particulate emissions. What is “obnoxious” is a question of law and fact.
B(6)	•		Landfill will not cause disturbing noise, because it will not exceed noise standards. It will increase noise. What is “disturbing” is a question of law and fact.
B(7)	•		Landfill will not unduly interfere with orderly enjoyment of existing park. Effect on future park is speculative. What is “undue interference” and “orderly enjoyment” are questions of law and fact.
B(8)	•		Landfill site is large enough to accommodate suitably surfaced parking.
B(9)	•	•	Whether site is “sufficient, appropriate, and adequate” is a question of law and fact.
B(10)		•	Landfill is unreasonably near school, church and park, even with mitigation. What is “unreasonably near” is a question of law and fact.
B(11)		•	Landfill traffic will contribute to risk to pedestrians on unimproved portion of 1st Street. Whether increased risk is a “hazard” is a question of law and fact.
B(12)	•		Conditions and restrictions can be imposed consistent with the purposes of the chapter and to protect public. Whether they are adequate is a question of law and fact.

(D) The examiner concludes that it is in the public interest to grant the landfill application, based on the foregoing findings.

9. Having considered the standards in CCC 18.410.055, the examiner now proceeds to review the CUP and SWZP applications for compliance with CCC 18.404.060. The following statement replaces finding G.6 at p. 76 of the February 14, 2002 decision.

1
2 If the landfill and recycling center comply with CCC 18.410.055.A, they will not
3 be significantly detrimental to the health, safety or general welfare of persons residing or
4 working in the neighborhood or to the general welfare of the county. Because the landfill
5 and recycling center will comply with CCC 18.410.055.A for the reasons given above,
6 the examiner concludes the landfill will not be significantly detrimental to the health,
7 safety or general welfare of persons residing or working in the neighborhood or to the
8 general welfare of the county. Therefore the examiner should approve the CUP and
9 SWZP applications, subject to conditions that ensure the proposed use will be planned,
10 reviewed, built, operated, monitored and enforced as proposed or as otherwise provided
11 to ensure compliance with applicable laws in fact.
12

13 10. The decision regarding the covenant rezone largely depends on the CUP and
14 SWZP decisions. In the February 14, 2002 decision, the examiner concluded that the
15 covenant release application complied with all but one of the relevant standards for the
16 application. That approval standard requires the county to find that development of the
17 site would be “consistent with current zoning regulations and comprehensive plan
18 recommendations.” CCC 18.503.040.B(1). If the CUP and SWZP are approved, the
19 covenant release is consistent with current zoning regulations as implemented through
20 the CUP and SWZP. Therefore the examiner should approve the covenant release.
21

22 **C. RECOMMENDED CONDITIONS OF APPROVAL**

23

24 1. County staff recommended the examiner impose conditions of approval. See
25 Exhibit 372 and pp. 36-44 of Exhibit 328. The applicant did not dispute those conditions
26 as amended. The superior court did not address those conditions directly. The county
27 has authority to impose conditions pursuant to SEPA and CCC 18.404.060. The
28 examiner concludes the conditions of approval recommended and amended by county
29 staff should be imposed, except as provided in the following findings.
30

31 2. Condition A-15 should be amended to require the applicant to more
32 thoroughly discuss the stability of the reinforced embankment on the west side of the site
33 to address, among other issues, the height of the wall and its potential for slippage due to
34 the clayey soils beneath the wall and for movement due to seismic events, considering the
35 relevant standards of the UBC and good engineering practice and more accurate data
36 about the soils in question.
37

38 3. Condition A-21 should be amended to require the applicant to more
39 thoroughly characterize the consistency and uniformity of the cap above the Troutdale
40 Formation based on borings or other *in situ* measurements or observations on the site and
41 within a reasonable distance downgradient from the site.
42

43 4. Condition A-23 should be amended to require an approved liner leak response
44 plan, replacement of water supplies lost if the alluvial aquifer is contaminated and such
45 contamination is not remedied in a timely manner, and more monitoring of construction
46 and operations by a third party engineer.

1
2 5. To provide independent peer review of certain technical aspects of future plans
3 and construction for the landfill in a manner that best achieves the appearance of fairness,
4 the county or other appropriate public agency should contract with one or more qualified
5 engineers to provide professional services, and the applicant should be required to pay
6 the costs of such contracts. The cost of such contracts should be reasonable, (i.e., for
7 services related to and not in excess of those needed to fulfill the condition in a
8 reasonable way). To provide an opportunity for the applicant to assess and communicate
9 in a meaningful way about whether third party services for which it will pay are
10 reasonable, the applicant should be permitted to review and comment on proposed
11 contracts for such services before they are executed. Such a contract is warranted for the
12 following conditions:

13
14 a. For condition A-15, to the extent the Chief Building Official concludes
15 such assistance is warranted in the review of grading plans and stability and support
16 issues;

17
18 b. For condition A-21, to the extent the county concludes such assistance
19 is warranted in the review of data regarding the groundwater level;

20
21 c. For condition A-23, which requires monitoring of construction and
22 operations to protect water quality;

23
24 d. For condition A-36, which requires an engineer to implement a
25 construction quality assurance/quality control ("CQA/QC") program. This condition also
26 should be amended to clarify that the engineer should observe installation of the bottom
27 and side liners and of the initial lift in each phase of the landfill and of leachate
28 monitoring and detection systems (see condition A-25);

29
30 e. For conditions A-54, A-55 and A-56, to the extent the county
31 concludes such assistance is needed in the review of noise data

32
33 6. Condition A-39, which requires the applicant to submit and receive approval
34 of a landscaping plan, should be amended to reflect the general requirements for such a
35 plan as provided in Exhibit 372.

36
37 7. Condition A-40 should be amended to be more clear and certain. The FEIS
38 assumes the volume of waste received at the site will grow by 2.4 percent annually.
39 Condition of approval A-40 should note that. Also violation of this condition should be
40 the basis for prompt enforcement action by the County, and should not be allowed to
41 continue pending action on a proposed amendment to the CUP. That keeps the horse
42 before the cart.

43
44 8. To provide a more reliable basis for monitoring of particulates that may be
45 disturbing, the applicant should be required to characterize particulate emissions given a
46 more realistic assessment of wind speeds rather than averaging wind speeds over a long

1 time period (e.g., a year). Condition of approval A-42 should be amended to recommend
2 state and federal agencies require a more realistic assessment of particulates at least with
3 regard to wind speed. Because state and federal agencies are responsible for determining
4 whether the use complies with their standards, the examiner assumes the county cannot
5 require those agencies to consider more realistic wind speeds when assessing air quality.
6

7 9. To assure that smelting does not cause significant adverse air quality impacts,
8 smelting on-site should be prohibited or limited. The applicant proposed a limited
9 amount of smelting as part of the recycling center. The examiner concludes smelting will
10 not be significantly detrimental if it is limited in frequency, duration and character (i.e.,
11 what is smelted and how) and does not cause air quality impacts that violate state or
12 federal standards. The examiner recommends the applicant be required to propose how
13 to limit the frequency, duration and character of smelting and how to monitor air quality
14 impacts of smelting if the planning director concludes monitoring is warranted by the
15 amount or nature of the proposed smelting (e.g., if emissions could exceed fifty percent
16 of the maximum permitted by state or federal standards). Condition A-42 should be
17 amended accordingly.
18

19 10. The county did not recommend an objective limit on putrescible (so-called
20 “green”) waste landfilled at the site, but did recommend monitoring and remediation.
21 Recommended conditions of approval A-43 through A-45 would require monitoring of
22 gas emissions, installation of a gas collection system, and collection and destruction of
23 gas if methane levels exceeds regulatory limits.
24

25 a. The City of Vancouver recommended a more subjective standard for
26 determining whether an odor impact occurs, i.e., odor should not be “noticeably
27 unpleasant and of a magnitude such that an individual would get up to close windows or
28 doors...” p. 3, Exhibit 796. If an odor complaint occurs and is verified by the county, the
29 city recommended the applicant remedy the problem within 48 hours. If the county
30 receives and verifies six odor complaints or if the applicant fails to timely remedy two
31 verified odor complaints within a 12-month period, the city recommended the county
32 planning director be authorized to require additional mitigation or to initiate revocation
33 of the CUPs. The applicant objected to the city’s recommendation.
34

35 b. Under the condition recommended by the county, the applicant is not
36 obliged to collect landfill gas until it exceeds the permitted maximum level. By that time,
37 the odor from gas emissions is likely to have existed for some time and to have increased
38 to the point where it is obnoxious. The examiner believes that gas collection should be
39 required as soon as methane gas levels at the relevant point or points exceed fifty percent
40 of the more stringent of state or federal standards so obnoxious conditions are not
41 created. Given that the applicant will design and install a gas collection system anyway,
42 requiring the applicant to use the system is a reasonable way to ensure odors will not be
43 obnoxious. The planning director also should be authorized to require the applicant to
44 collect and destroy gas if he or she concludes it is causing odors that are obnoxious to a
45 person of reasonable sensitivity to odor. Condition of approval A-44 should be modified
46 accordingly.

1
2 c. The city's recommendation could get to the issue of whether odors are
3 obnoxious better than would compliance with the conditions of approval recommended
4 by county staff, because the city condition would focus on verified odor complaints
5 rather than on compliance with an objective air quality standard. However the condition
6 also could be difficult to enforce. How would the county verify an odor complaint is
7 reasonable? Who's nose knows? When is an odor complaint remedied? How are they to
8 be evaluated in the event of an appeal? Due to these uncertainties the examiner
9 concludes the city-recommended condition to address odor should not be imposed. The
10 examiner finds that the principal source of odors emanating from the site will be
11 methane. If the methane is collected and destroyed consistent with state and federal
12 regulations, the examiner concludes it will not be obnoxious. The only issue is when
13 collection of the gas should be required.
14

15 11. Conditions A-54 and A-55 should be amended to require mitigation sufficient
16 to ensure that noise emissions do not violate applicable county limits as well as WAC
17 standards and to acknowledge that the UH-10, UH-20 and AG-20 and R1 zones are
18 residential for purposes of the county standards. They should also be amended to require
19 future noise modeling and monitoring to include all sources of loud noise, including
20 back-up alarms and banging tailgates, even though otherwise exempt from WAC
21 standards.
22

23 12. The applicant proposes to rely on an inspection and oversight program to
24 separate acceptable and unacceptable waste. The applicant provided a general
25 description of this protocol, but did not provide details of how sorting will be conducting
26 and monitored to assure compliance. Compliance with this protocol is important to
27 protecting air and water quality. The superior court took issue with the examiner
28 requiring such a protocol now and concluded it could be provided later. A condition of
29 approval should be added to require the applicant to provide a protocol for this process
30 for review and approval. Also at pp. 47-48 of the February, 2002 decision, the examiner
31 discussed why the sorting protocol could fail if water enters the unsorted waste or
32 workers doing the sorting are distracted by weather. Enclosing or covering the waste
33 receiving and sorting area would reduce the potential that rainfall will enter the waste
34 stream and exit as leachate. It also will increase the comfort of landfill workers charged
35 with separating waste. Although the superior court concluded it was speculative to find
36 landfill staff will be less effective if uncovered, the examiner believes it is a reasonable
37 inference from everyday life that it is harder to do a thorough job of inspecting waste to
38 discriminate between acceptable and unacceptable materials if one is being distracted by
39 a deluge. The examiner continues to believe that at least covering the waste receiving
40 and sorting area is warranted to ensure the proposal complies with applicable water
41 quality objectives and reduces particulate emissions rising from the sorting area. It is not
42 clear to the examiner whether the court would sustain such a condition. But the examiner
43 believes there is authority for the county to adopt such a condition and that it is
44 reasonable and warranted in light of the potential adverse effects of the use and the
45 evidence in the record. Therefore the examiner adds condition of approval A-83 to

1 require such a cover and the submission and approval of a protocol for workers who sort
2 waste preparatory to landfilling or recycling.

3
4 **D. DECISION**
5

6 Based on the findings and conclusions above and substantial evidence in the
7 record in this matter, the examiner hereby denies the SEPA appeals and approves the
8 conditional use permit, solid waste zoning permit and covenant release, subject to the
9 following conditions of approval:
10

11 **Transportation:**

12 A-1 NE 1st Street the applicant shall dedicate a minimum 50 foot half-width right-of-
13 way and construct half width roadway construction with 6 foot offset sidewalk in
14 accordance with table 12.05.120-1 along project frontage, with adequate tapers.
15 Additional dedication of tapers and construction shall be employed to construct
16 the driveway location.
17

18 A-2 NE 1st Street the applicant shall dedicate a minimum 30 foot half-width right-of-
19 way and construct half width roadway construction with 6 foot offset sidewalk in
20 accordance with table 12.05.120-1 along project frontage, with adequate tapers.
21 The adequate dedication and construction shall be employed to construct at
22 driveway location.
23

24 A-3 NE 192nd Avenue the applicant shall dedicate a minimum 50 foot half-width
25 right-of-way and construct half width roadway construction with 6 foot offset
26 sidewalk in accordance with table 12.05.120-1 along project frontage, with
27 adequate tapers. The adequate dedication and construction shall be employed to
28 construct at driveway locations.
29

30 A-4 The driveway shall be concrete and built in accordance with CCC 12.05A.210.
31 Access to NE 1st Street shall be limited to one driveway for the landfill/recycling
32 center located at the existing eastern access. The issue of other existing
33 driveways used by other operations will be addressed at site plan review.
34

35 A-5 The subject site shall meet all requirements for minimum sight
36 distances at intersections and driveways found in sections
37 12.05A.250.
38

39 A-6 The construction and design of all intersections shall meet the requirements as
40 specified in Design criteria found in Sections 12.05A.340 and Tables 12.05A.120-
41 1 through 12.05A.120-5.
42

43 A-7 Frontage adjacent to NE 1st Street. and NE 192nd Avenue shall be landscaped in
44 accordance with section 12.05A.600 and appendix G.
45

1 A-8 Comply with CCC 12.05A of the Road Standards.

2
3 **Stormwater:**

4 A-9 A final stormwater plan be designed in accordance with CCC
5 13.25A shall be submitted and approved by the director prior to
6 final site plan. A professional engineer licensed in the state of
7 Washington must provide this information.

8
9 A-10 A 10-foot separation elevation consisting of uncontaminated soil shall separate
10 the landfill and the seasonal high groundwater level of the uppermost aquifer
11 must be established and maintained.

12
13 A-11 The stormwater analysis shall utilize the design for the stormwater system must
14 complete a closed depression analysis in accordance with the BMP Manual
15 (Chapters III-1 and III-3).

16
17 A-12 The applicant shall submit a contributing area drainage map including the site for
18 all stormwater runoff including acreage's and assure that upstream drainage is
19 provided for meeting the requirements of CCC 13.25.220 (4) (c) & (b) for
20 Stormwater conveyance. All stormwater conveyance must meet the following
21 criteria and be designed to pass the 25 year storm because the contributing
22 drainage areas is in excess of forty (40) acres or more.

23
24 A-13 All infiltration facilities shall be a minimum of 3 feet above the
25 seasonal high water or an impermeable layer (see CCC
26 13.25A.310.310). A groundwater monitoring program must be
27 completed for the site in compliance with Section 13.25A.210.305.

28
29 A-14 Stormwater facilities with vertical sides of more than 3 feet must be fenced when
30 adjacent to public access areas (see CCC 13.25A.340.330).

31
32 A-15 A final grading plan, designed in accordance with chapter 33, (excavation and
33 grading of the 1997 uniform building code) shall be submitted by the applicant's
34 engineer and approved by the director prior to construction. In conjunction with
35 this plan, the applicant shall submit evidence that shows the reinforced
36 embankment on the west side of the site will be stable, not withstanding its height
37 and the presence of clayey soils beneath the wall and the potential for earth
38 movement due to seismic events, considering the relevant standards of the UBC,
39 good engineering practice and more accurate data about the soils in question. The
40 Chief Building Official may contract with one or more independent third party
41 engineers to assist the county to review the grading permit application, and may
42 charge the applicant for the cost of those professional services, provided they are
43 reasonable. The Chief Building Official shall consult with the applicant before
44 contracting for such services.

1 A-16 Record plans which accurately represent the development site as constructed shall
2 be provided to Clark county prior to the issuance of building permits for single-
3 family residences and within 60 days following completion of construction of
4 other project types (i.e. commercial, industrial etc.). Refer to CCC
5 13.25A.300.363 for additional details regarding record plan requirements.
6

7 A-17 All publicly owned facilities including stormwater located in the right of way of
8 NE 1st Street and NE 192nd Avenue shall be covered with a maintenance bond for
9 a two-year period. During this two-year period the developer shall complete all
10 maintenance. Prior to the end of the two year bonded period, county inspectors
11 will provide the developer a punch list of defects, which must be completed
12 before county acceptance of the facilities.
13

14 A-18 All on site private stormwater facilities shall have a covenant on
15 the land allowing Clark County inspection and emergency repairs.
16

17 A-19 A final erosion control plan, designed in accordance with CCC
18 13.27 A, shall be submitted and approved by the director prior to
19 construction. The plan shall also cover construction on individual
20 lots. A copy of the erosion control plan shall be submitted to the
21 chief building official prior to final plat approval. No erosion
22 control facility shall be removed without prior approval by the
23 design engineer being submitted in writing to the county inspector.
24 The design engineer shall assure that no silt is likely to enter the
25 system before authorization is provided to remove erosion/siltation
26 control facilities.
27

28 A-20 Construction of facilities shall take place only during the dry
29 season (approximately May through September).
30

31 **Groundwater Protection:**

32 A-21 The groundwater level shall be clearly determined by the applicant
33 to be reviewed by Clark County and the Southwest Washington
34 Health District before issuance of the Final Site Plan or the Solid
35 Waste Handling Permit. To assure the groundwater elevation, the
36 applicant shall thoroughly characterize the consistency and
37 uniformity of the cap above the Troutdale formation based on
38 borings or other *in situ* measurements or observation of the site and
39 within a reasonable distance downgradient from the site. The
40 county may contract with one or more independent third party
41 engineers or other professionals to assist the county to review the
42 groundwater determination, and may charge the applicant for the
43 cost of those professional services, provided they are reasonable.

1 The county shall consult with the applicant before contracting for
2 such services.

3
4 A-22 Construction of the special use/limited purpose landfill shall
5 include a minimum 10-foot-thick layer of uncontaminated soil
6 between landfill and the seasonal high level of the uppermost
7 aquifer as determined and approved by reviewing agencies.

8
9 A-23 If any adverse groundwater impacts result from the project the
10 operator/owner of the landfill shall provide mitigation against any
11 impacts to groundwater wells in the area, as described in the FEIS
12 (pg. 3-8 & 3-14). As part of the mitigation, the applicant shall
13 provide a liner leak response plan for review and approval, shall
14 commit to replace water supplies lost if the alluvial aquifer is
15 contaminated, and shall provide a detailed plan for groundwater
16 monitoring for review and approval. The county may contract
17 with one or more independent third party engineers or other
18 professionals to assist the county to monitor groundwater or to
19 review monitoring by the applicant and/or to review construction
20 and groundwater impacts during operation of the landfill, and may
21 charge the applicant for the cost of those professional services,
22 provided they are reasonable. The county shall consult with the
23 applicant before contracting for such services.

24
25 A-24 Prior to construction or operation of the any facilities related to the
26 proposal, it must be demonstrated by the applicant that there are no
27 wells less than 90 days travel time hydraulically downgradient in
28 the uppermost usable aquifer. This shall be reviewed by Clark
29 County or the Southwest Washington Health District. If the
30 requirement is not met, mitigation will be necessary or the project
31 shall not proceed

32
33 A-25 A groundwater monitoring network and monitoring for leachate
34 indicator parameters as outlined in Technical Appendix F of the
35 FEIS or as prescribed by the Solid Waste Handling Permit shall be
36 conducted during the period of operation and 20 years after closure
37 of the last phase of the landfill.

38
39 A-26 If there is a significant increase in the leachate indicator
40 parameters in a monitoring well at the site, appropriate corrective
41 actions will be required to comply with applicable regulations.

42

- 1 A-27 The active area of the landfill face shall be limited to two (2) acres
2 to minimize leachate production.
- 3
- 4 A-28 A bottom liner consistent with that detailed in this report,
5 Technical Appendix P and the remainder of the FEIS shall be
6 installed.
- 7
- 8 A-29 An approved leachate collection and removal system shall be
9 installed above the bottom liner.
- 10
- 11 A-30 A leak detection system shall be installed beneath the main
12 leachate collection lines, sumps and the leachate pond
- 13
- 14 A-31 A system to pump the collected leachate to a temporary
15 storage/pretreatment pond shall be installed.
- 16
- 17 A-32 Daily and interim cover shall be placed to promote runoff and
18 stormwater controls to prevent run-on.
- 19
- 20 A-33 The final cover system shall be designed to prevent infiltration of
21 rainfall.
- 22
- 23 A-34 The bottom liner of the landfill shall be constructed as shown on
24 sheet 7 of 10 in Technical Appendix P of the FEIS.
- 25
- 26 A-35 If the liner system is found to be insufficient for protecting groundwater or
27 infeasible during final engineering design, any alternative would need to be
28 reviewed for acceptability under the conditional use permit and potentially SEPA.
- 29
- 30 A-36 The county may contract with one or more independent third party
31 engineers to implement a construction quality assurance/quality
32 control (CQA/QC) program for each stage of side and bottom liner
33 construction. The independent engineer shall have previous
34 experience in implementing CQA/QC program monitoring for
35 landfill construction. The Southwest Washington Health District
36 or its successor shall approve of the engineer. The program shall
37 follow the procedures outlined in the FEIS for the CQA/QC and
38 also be approved by the Southwest Washington Health District or
39 its successor. The engineer should observe installation of the
40 bottom and side liners and of the initial lift in each phase of the
41 landfill and of leachate monitoring and detection systems. The
42 county may charge the applicant for the cost of those professional

1 services, provided they are reasonable. The county shall consult
2 with the applicant before contracting for such services.

3

4 **Health:**

5 A-37 The proposed development shall connect to an approved sewer system.

6

7 A-38 The proposed development shall connect to an approved water system.

8

9 **Solid Waste Zoning Criteria:**

10 A-39 Before the county approves a preliminary site plan, the applicant shall submit a
11 landscaping plan in the format required by CCC 18.402A showing compliance
12 with landscaping standard L3-high screen along the south, east and west lot lines
13 of tax lot 176378, which includes landscaping along the common boundary with
14 tax lots 176377 and 176388; and along the south lot line of tax lot 176409. The
15 plan also shall include landscaping along the 1st Street frontage of tax lots
16 176374 and 176385 to include existing mature trees to be enhanced with
17 appropriate groundcover and shrubs. This landscaping shall be on the outside of
18 the required wall. The berm constructed on the west lot line of tax lot 176386 and
19 176374 shall be planted with 2.1 stock Douglas fir at 11-foot centers to provide a
20 screening buffer as segments of the berm are constructed.

21

22 A-39.1 A Neighborhood Advisory Group shall be established by the operator of the
23 facility to allow communication between the operator and residents and
24 businesses around the facility. The group shall meet once a year, at a minimum,
25 with notice going to property owners and residents within three-eighths mile of
26 the site boundaries. Summary notes from meetings shall be forwarded to the
27 Department of Community Development.

28

29 A-40 The traffic generated to and from the landfill and recycling facility shall not
30 exceed the levels predicted in the traffic study in Technical Appendix T,
31 including an annual growth rate in the volume of waste received of not more than
32 2.4 percent. If levels exceed those predicted, the operator must curtail operations
33 to meet the limits. The applicant may apply for a change to the requirements of
34 this conditional use permit but cannot violate those requirements pending
35 approval of such a change.

36

37 A-41 The applicants shall submit traffic volume information to the County Department
38 of Community Development on an annual basis.

39

40 A-42 The landfill and recycling operations shall meet all federal and state clean air
41 regulations.

42

43 A-42.1 To provide a more reliable basis for monitoring of particulates that may be
44 disturbing, the applicant should characterize particulate emissions given a more
45 realistic assessment of wind speeds rather than averaging wind speeds over a long

1 time period (e.g., a year); provided however that the agencies charged with air
2 quality enforcement shall determine whether the landfill and recycling operations
3 comply with state and federal clean air regulations and what evidence the
4 applicant must provide to do so.

5
6 A-42-2 To assure that smelting does not cause significant adverse air quality impacts, the
7 applicant shall agree in writing not to undertake smelting on-site, in which case
8 smelting on site is prohibited, or shall submit a program to the planning director
9 for review and approval describing how the applicant will limit the frequency,
10 duration and character of smelting so that it does not cause obnoxious odors or
11 violate state or federal clean air regulations, and when and how compliance with
12 the program will be monitored.

13
14 A-43 A landfill gas monitoring system should be installed by the operator to detect for
15 methane and other regulated gas emissions.

16
17 A-44 If methane gas levels exceed fifty percent of the levels permitted by state or
18 federal clean air regulations, the applicant shall collect and destroy gas using a
19 system that meets the federal and state requirements.

20
21 A-45 A landfill gas collection system shall be installed during active filling of the
22 landfill.

23
24 A-46 A notice of construction (NOC) must be submitted prior to installation of a
25 landfill gas destruction device.

26
27 A-47 The operators must submit a notice of construction (NOC) application to
28 Southwest Clean Air Agency prior to construction or operation of equipment at
29 the landfill.

30
31 A-48 All permanent roads in the recycling area shall be paving to reduce dust.

32
33 A-49 Exposed areas of the landfill and recycling site shall be kept damp, planted with
34 vegetative cover or covered with plastic.

35
36 A-50 Paved and unpaved internal roads shall be kept damp to reduce fugitive dust from
37 the development.

38
39 A-51 Customers shall be restricted to paved areas of the facility to reduce dust and the
40 tracking of mud.

41
42 A-52 The hours of operation for customer drop-off shall be limited to 8:00 a.m. – 5:00
43 p.m., Monday through Saturday.

44
45 A-53 The noise mitigation measures prescribed in the FEIS (Technical Appendix S, pg.
46 18) shall be implemented and adhered to at all times.

1
2 A-54 Before the county approves the final site plan, the applicant shall submit
3 substantial evidence showing the proposed noise mitigation will reduce noise
4 levels at the property line so they do not exceed WAC maximum permissible
5 noise levels assuming that all sources of noise are considered, including
6 instantaneous and peak noise sources otherwise exempt from the WACs, and that
7 adjoining land to the west and across 192nd Avenue to the east are residential.
8 The planning director shall approve the plan if he or she is persuaded the
9 mitigation will achieve compliance. The planning director may require
10 monitoring of noise levels to verify compliance, and may restrict or suspend
11 operations if noise levels exceed the maximum permitted by law and the applicant
12 does not timely remedy the violation. The county may contract with one or more
13 independent third party engineers with expertise in noise to assist the county to
14 review the applicant's evidence and monitoring of noise, and may charge the
15 applicant for the cost of those professional services, provided they are reasonable.
16 The county shall consult with the applicant before contracting for such services.
17 The noise engineer also may assist the county with its responsibilities under
18 condition A-55.

19
20 A-55 Prior to any landfill operations taking place in the eastern portion of the site
21 (designated as cells 7-9 in Revised Figure 5.2 of the FEIS), the proposed
22 mitigation shall be reviewed and approved to ensure compliance with WAC and
23 Clark County noise standards.

24
25 A-56 Use of any additional equipment that was not incorporated into the noise study
26 shall require further review and approval.

27
28 A-57 The relocation of the recycling operations on-site or off-site will require
29 additional review to access impacts. This review shall take place prior to the
30 move.

31
32 A-58 Cover exposed cells in the landfill nightly so that solid waste would be visible
33 only during working hours.

34
35 A-59 Conduct the waste sorting at an elevation 50 feet below street level.

36
37 A-60 Cover any waste left on the site in the sorting area at the end of day (i.e., not
38 recycled off-site or deposited in the pit.

1 A-61 Cover filled cells with earth and vegetation, beginning with an engineered slope
2 on the west and north sides of Cell 1 (occurring at the time that Cell 3 is being
3 filled) in approximately two years (north side) to five years (west side).

4
5 A-62 Control litter with daily clean up (when in operation and as additionally needed)
6 of debris on-site and along 1st Street and 192nd Avenue by a manual work crew
7 and by mechanical means when necessary.

8
9 A-63 A landscaped berm shall be constructed on SE 1st Street and 192nd Avenue prior
10 to receipt of any waste at the recycling and landfill facility.

11
12 A-64 A 100-foot buffer shall be maintained between the active area of the landfill and
13 the property boundary.

14
15 A-65 A six-foot high concrete wall on top of the two-foot high berm shall be
16 constructed along the northeast, east and south property lines prior to receipt of
17 any waste at the recycling and landfill facility.

18
19 A-66 DELETED.

20
21 A-67 The portions of the site where a concrete wall is not required shall be fenced
22 and/or gated.

23
24 **Solid Waste Zoning Permit:**

25 A-68 The landfill shall be developed in a manner that meets the requirements outlined
26 by Gary Arndt, a Professional Engineer (Ex. #286), to allow for future
27 development of the site.

28
29 A-69 A 'hosting fee' shall be paid to Clark County to cover the increased cost to the
30 public to monitor the facility and to cover costs to the Clark County Solid Waste
31 program and the Department of Community Development. The fee shall be \$5.15
32 per ton of waste that is landfilled. The fee will not be assessed for materials that
33 are recycled. The fee shall be adjusted annually at a rate of 82 percent of the
34 Consumer Price Index (CPI).
35

- 1 A-70 The landfill shall meet the Washington State Department of Ecology's Minimum
2 Functional Standards for special use/limited purpose landfills in accordance with
3 Washington Administrative Code 173-304.
4
- 5 A-71 The operator of the landfill and recycling operation is required to follow all of the
6 procedures and mitigation measures described in the Final Environmental Impact
7 Statement issued by Clark County for East County Reclamation Center, unless
8 other more restrictive procedures or mitigation measures are required by the
9 conditional use permit or the solid waste operating permit.
10
- 11 A-72 A detailed plan of the final closure shall be submitted for review and approval
12 prior to final site plan approval. Bonding for this plan is required to ensure that
13 the plan is followed or can be finished if the operation ceases.
14
- 15 A-73 The level of the fill shall not exceed 305 mean sea level (msl).
16
- 17 A-74 This conditional use permit and solid waste zoning permit is only valid for 20
18 years from issuance. A new application will be required for operations to
19 continue beyond the 20-year period.
20
- 21 A-75 A methodology to calculate a bond shall be established by the applicants and
22 reviewed and approved by the Southwest Washington Health District and Clark
23 County during the Solid Waste Handling Permit or the Final Site Plan process to
24 ensure closure of the facility and post-closure monitoring takes place. In addition,
25 a small security shall also be included with this bond to ensure that the County
26 can pursue the operators if the site is not reclaimed as required by this permit.
27

28 **Waste Stream:**

- 29 A-76 Only the waste stream that is listed as Acceptable Waste list in this conditional
30 use permit shall be allowed into the proposed landfill and recycling center. Any
31 additions to the accepted waste list would require approval of a new or amended
32 solid waste zoning permit.
33
- 34 A-77 No dangerous waste, hazardous waste, household or commercial solid waste shall
35 be accepted.
36
- 37 A-78 Unacceptable wastes that are accidentally accepted at the facility shall be
38 collected and stored in a covered dumpster(s) and removed on a regular basis to a
39 designated disposal site in accordance with CCC 9.32.
40
- 41 A-79 The recycling facility process flow chart (Figure 2-2, pg. 2-4 of the FEIS) shall be
42 followed.
43
- 44 A-80 A minimum of 30% of all waste received at the site shall be composed of
45 recyclable content, determined on an annual basis with reporting to Clark County
46 on a quarterly basis.

1
2 A-81 When necessary, the recycling facility shall be relocated to another portion of the
3 site or off-site and cannot be abandoned while the landfill is still being filled.

4
5 A-82 The relocation of the recycling facility, on-site or off-site, will require additional
6 review, which shall take place prior to the move.

7
8 A-83 The applicant shall cover or enclose the waste receiving and sorting area.
9

10 **Standard Conditions**

11
12 This development proposal shall conform to all applicable sections of the Clark
13 County Code. The following conditions shall also apply:
14

15 **General:**

16 S-2 Conditional Use Permit approvals - Within 5 years of approval, a Fully Complete
17 application for building permits shall be submitted.
18

19 **Pre-Construction Conference:**

20 S-3 Prior to construction or issuance of any grading or building permits, a pre-
21 construction conference shall be held with the County.
22

23 **Erosion Control:**

24 S-4 Prior to construction, the applicant shall submit and obtain County approval of a
25 final erosion control plan designed in accordance with CCC 13.29 or 13.27A (as
26 applicable per the vesting date).
27

28 S-6 Prior to construction, erosion/sediment controls shall be in place. Sediment
29 control facilities shall be installed that will prevent any silt from entering
30 infiltration systems. Sediment controls shall be in place during construction and
31 until all disturbed areas are stabilized and any erosion potential no longer exists.
32

33 S-7 Erosion control facilities shall **not** be removed without County approval.
34

35 **Excavation and Grading:**

36 S-8 Excavation/grading shall be performed in compliance with Appendix Chapter 33
37 of the Uniform Building Code (UBC).
38

39 S-9 Site excavation/grading shall be accomplished, and drainage facilities shall be
40 provided, in order to ensure that building foundations and footing elevations can
41 comply with CCC 14.04.252.
42

43 **Transportation:**

44 S-11 Prior to construction, the applicant shall submit and obtain County approval of a
45 final transportation plan designed in conformance to CCC 12.05.
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DATED this _____ day of May, 2003.

Larry Epstein, AICP
Clark County Land Use Hearings Examiner